

PART 53—COAST GUARD WHISTLEBLOWER PROTECTION

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AUTHORITY: 10 U.S.C. 1034, Pub. L. 100-456, Pub. L. 101-225.

SOURCE: 56 FR 13405, Apr. 2, 1991, unless otherwise noted.

§ 53.1 Purpose.

This part:

(a) Establishes policy and implements section 1034 of title 10 of the United States Code to provide protection against reprisal to members of the Coast Guard for making a lawful communication to a Member of Congress or an Inspector General.

(b) Assigns responsibilities and delegates authority for such protection and prescribes operating procedures.

§ 53.3 Applicability.

This part applies to members of the United States Coast Guard, the Board for Correction of Military Records of the Coast Guard, and the Department of Transportation's Office of the Inspector General.

§ 53.5 Definitions.

As used in this part, the following terms shall have the meaning stated, except as otherwise provided:

Board for Correction of Military Records of the Coast Guard. The Department of Transportation Board for Correction of Military Records of the Coast Guard (Board) is empowered under 10 U.S.C. 1552 to make corrections of Coast Guard military records. The Board is part of the Office of the General Counsel in the Office of the Secretary of Transportation.

Corrective Action. Any action deemed necessary to make the complainant whole, changes in agency regulations or practices, and/or administrative or disciplinary action against offending personnel, or referral to the U.S. Attorney General or courtmartial convening authority of any evidence of criminal violation.

Inspector General. The Inspector General in the Office of Inspector General of the Department of Transportation, as appointed under the Inspector General Act of 1978.

Law Specialist. A commissioned officer of the Coast Guard designated for special duty (law).

Member of the Coast Guard. Any past or present Coast Guard uniformed personnel, officer or enlisted, regular or reserve. This definition includes cadets of the Coast Guard Academy.

Member of Congress. In addition to a Representative or a Senator, the term includes any Delegate or Resident Commissioner to Congress.

Personnel Action. Any action taken regarding a member of the Coast Guard that adversely affects or has the potential to adversely affect the member's position or his or her career. Such actions include, but are not limited to, a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; or a decision concerning a promotion, pay, benefits, awards, or training.

Reprisal. Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a member of the Coast Guard for making or preparing to make a communication to a Member of Congress or an Inspector General.

Secretary. The Secretary of Transportation or his or her delegate.

§ 53.7 Requirements.

(a) No person within the Department of Transportation may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.

(b) Members of the Coast Guard shall be free from reprisal for making or preparing to make lawful communications to Members of Congress or an Inspector General.

(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or

preparing to make a lawful communication to a Member of Congress or an Inspector General.

§ 53.9 Responsibilities.

(a) The Inspector General, Department of Transportation shall:

(1) Expeditiously investigate any allegation, if such allegation is submitted, that a personnel action has been taken (or threatened) in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General concerning a complaint or disclosure of information that the member reasonably believes constitutes evidence of a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. No investigation is required when such allegation is submitted more than 60 days after the Coast Guard member became aware of the personnel action that is the subject of the allegation.

(2) Initiate a separate investigation of the information the Coast Guard member believes evidences wrongdoing if such investigation has not already been initiated. The Inspector General is not required to make such an investigation if the information that the Coast Guard member believes evidences wrongdoing relates to actions that took place during combat.

(3) Complete the investigation of the allegation of reprisal and issue a report not later than 90 days after receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The Inspector General may forward a recommendation as to the disposition of the complaint.

(4) Submit a copy of the investigation report to the Secretary of Transportation and to the Coast Guard member making the allegation not later than 30 days after the completion of the investigation. The copy of the report issued to the Coast Guard member may exclude any information not otherwise available to the Coast Guard

member under the Freedom of Information Act (5 U.S.C. 552).

(5) If a determination is made that the report cannot be issued within 90 days of receipt of the allegation, notify the Secretary and the Coast Guard member making the allegation of the reasons why the report will not be submitted within that time, and state when the report will be submitted.

(6) At the request of the Board, submit a copy of the investigative report to the Board.

(7) After the final action with respect to an allegation filed under this part, whenever possible, interview the person who made the allegation to determine the views of that person concerning the disposition of the matter.

(b) The Board shall, in accordance with its regulations (33 CFR part 52):

(1) Consider under 10 U.S.C. 1552 and 33 CFR part 52 an application for the correction of records made by a Coast Guard member who has filed a timely complaint with the Inspector General, alleging that a personnel action was taken in reprisal for making or preparing to make a lawful communication to a Member of Congress or an Inspector General. This may include oral argument, examining and cross-examining witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation by the Inspector General into the Coast Guard member's allegation of reprisal.

(3) As deemed necessary, request the Inspector General to gather further evidence and issue a further report to the Board.

(4) Issue a final decision concerning the application for the correction of military records under this part not later than 180 days after receipt of a complete application.

(c) If the Board elects to hold an administrative hearing, the Coast Guard member may be represented by a Coast Guard law specialist if:

(1) The Inspector General, in the report of the investigation, finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the Coast Guard member making or preparing to make a lawful communication to a